

HEALTH AND SENIOR SERVICES

DIVISION OF SENIOR BENEFITS AND UTILIZATION MANAGEMENT

Hearing Aid Assistance to the Aged and Disabled

Adopted New Rules: N.J.A.C. 8:83B

Proposed: April 19, 2004 at 36 N.J.R. 1861(a)

Adopted: July 29, 2004 by Clifton R. Lacy, M.D., Commissioner,
Department of Health and Senior Services

Filed: As R.2004 d.369, **without change.**

Authority: N.J.S.A. 30:4D-36 through 42

Effective Date: October 4, 2004.

Expiration Date: October 4, 2009.

Summary of Public Comments and Agency Response:

No comments were received.

Federal Standards Statement

The HAAAD program is completely State-funded. Therefore, a Federal standards analysis is not required.

Full text of the adoption follows:

CHAPTER 83B

HEARING AID ASSISTANCE TO THE AGED AND DISABLED

SUBCHAPTER 1 GENERAL PROVISIONS

8:83B-1.1 Purpose

(a) The purpose of this chapter, Hearing Aid Assistance to the Aged and Disabled (HAAAD), is to provide a payment of up to \$100.00 in a calendar year in which a hearing aid is purchased to offset the cost of the hearing aid for individuals who meet the age or disability, income and residency requirements of the Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program.

(b) This chapter has been developed as a statement of policy and procedures and is applicable only to eligibility for the HAAAD Program.

8:83B-1.2 Legal authority

The New Jersey Program of Hearing Aid Assistance to the Aged and Disabled (HAAAD) is established by Chapter 198, Laws of 1987 (N.J.S.A. 30:4D-36 et seq.), effective February 4, 1988.

SUBCHAPTER 2 DEFINITIONS

8:83B-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Annual income” means all income from whatever source derived, actually received or anticipated.

“Applicant” means an individual who applies for HAAAD, either personally or through an authorized agent.

“Beneficiary” means an individual who has been found eligible for HAAAD benefits.

“Calendar year” means a year beginning January 1 and ending on December 31.

“Calendar year” is the base period utilized to determine annual income and HAAAD eligibility.

“Commissioner” means the Commissioner of the Department of Health and Senior Services.

“Department” means the Department of Health and Senior Services.

“Resident” means a person legally domiciled within the State of New Jersey for a period of 30 days immediately preceding the date of application for inclusion in the HAAAD program. Mere seasonal or temporary residence within the State, of whatever duration, does not constitute domicile.

“Special needs trust” means a trust containing the assets of a disabled individual that is established for the sole benefit of the individual by a parent, grandparent, legal guardian

or court prior to the time the individual reaches the age of 65. (See N.J.A.C. 8:83B-2.2 for provisions).

“Viatical settlement” means the sale or cashing in of a life insurance policy prior to the death of the insured, due to the fact that the insured has experienced a catastrophic, life-threatening or chronic illness or condition.

8:83B-2.2 Special needs trusts

(a) To be considered a special needs trust, the trust shall include the following provisions:

1. The trust shall specifically state that the trust is for the sole benefit of the trust beneficiary.
2. The trust shall specifically state that its purpose is to permit the use of trust assets to supplement, and not to supplant, impair or diminish, any benefits or assistance of any Federal, State or other governmental entity for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving.
3. The trust shall specifically state the age of the trust beneficiary, that the trust beneficiary is disabled within the definition of 42 U.S.C. § 1382c(a)(3), and whether the trust beneficiary is competent at the time the trust is established.
4. The trust shall specifically identify, in an attached schedule, the source of the initial trust property and all assets of the trust.
5. If the trust makes provisions which are intended to limit invasion by creditors or to insulate the trust from liens or encumbrances, the trust shall state that such provisions are not intended to limit the State’s right to reimbursement or to recoup incorrectly paid benefits.
6. The special needs trust shall state that it is established by a parent, grandparent, or legal guardian of the trust beneficiary or by a court.
7. The trust shall specifically state that it is irrevocable. Neither the grantor, the trustee(s), nor the beneficiary shall have any right or power, whether alone or in conjunction with others, in whatever capacity, to alter, amend, revoke, or terminate the trust or any of its terms or to designate the persons who shall possess or enjoy the trust estate during his or her lifetime.
8. The trustee shall be specifically identified by name and address. The trust shall state that the original trust beneficiary cannot be the trustee. The trust shall make provisions for naming a successor trustee in the event that any trustee is unable or unwilling to serve.
9. The trust shall specifically state that the trustee shall fully comply with all State laws, including the Prudent Investor Act, N.J.S.A. 3B:20-11.1 et seq. The trust shall provide that the trustee cannot take any actions not authorized by, or without regard to, State laws. If the trust gives the trustee

authorization or power not provided for in the Prudent Investor Act, an accompanying letter shall provide an explanation for each such authorization or power.

10. The trust shall specifically state that the trustee shall be compensated only as provided by law (N.J.S.A. 3B:18-1 et seq.) If the trust identifies a guardian, the trust shall specifically identify him or her by name. A guardian shall be compensated only as provided by law.
11. The trust shall specify that a formal or informal accounting of all expenditures made by the trust shall be submitted to the appropriate eligibility determination agency on an annual basis.
12. The State shall be given advance notice of any expenditure in excess of \$5,000, and of any amount which would substantially deplete the principal of the trust. Notice shall be given to the Office of Support Services for the Aged, Division of Senior Benefits and Utilization Management, PO Box 715, Trenton, NJ 08625-0715, or any successor agency, 45 days prior to the expenditures.
13. New Jersey rules and laws do not permit a trust to create a will for an incompetent or a minor. The money creating the trust, any additions and/or interest accumulated, cannot be left to other parties, but shall pass by intestacy. The trust shall not create other trusts within it.

SUBCHAPTER 3 ADMINISTRATIVE ORGANIZATION

8:83B-3.1 Department of Health and Senior Services

The Department of Health and Senior Services is the administrative unit of the State government which has control over the administration of HAAAD. Under the terms of the HAAAD law, the Department is responsible for the general policies, governing administration of HAAAD, and for effecting the issuance of rules and procedures in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., for implementing the statutory provisions.

8:83B-3.2 Pharmaceutical Assistance to the Aged and Disabled

Pharmaceutical Assistance to the Aged and Disabled (PAAD) is the unit which has the direct responsibility for the processing of eligibility applications and for authorizing payment of HAAAD benefits.

8:83B-3.3 Agency controls

(a) The Commissioner shall establish operating policies to expedite the processing of applications and to assure the maximum possible compliance with the standards set forth in this chapter.

(b) The Department of Health and Senior Services, Division of Medical Assistance and Health Services, has the responsibility for investigating beneficiaries in matters involving potential fraud and/or abuse.

SUBCHAPTER 4 APPLICATION PROCESS

8:83B-4.1 General provisions

The application process includes all activity relating to a request for eligibility determination. The application process begins with the receipt by the Department of an eligibility application and continues in effect until there is an official disposition of the request by the Department.

8:83B-4.2 Authorized agent

(a) In those instances where the applicant is incompetent or incapable of filing an eligibility application of his or her own behalf, the Department shall accept any one of the following, listed in the order of priority, as an authorized agent for the purpose of initiating such application:

1. Power of attorney;
2. A close relative by blood or marriage, that is, parent, spouse, son, daughter, brother, sister;
3. A representative payee designated by the Social Security Administration;
4. A staff member of a public or private social service agency, of which the person is a client, who has been designated by the agency to so act; or
5. A friend.

8:83B-4.3 Responsibilities in the application process

(a) The Department, through Pharmaceutical Assistance to the Aged and Disabled, establishes procedures on the application process consistent with law and supervises the operation with the policy and procedures so established.

(b) Pharmaceutical Assistance to the Aged and Disabled has responsibility in the application process to:

1. Explain the purposes and eligibility requirements of the program and indicate the applicant's rights and responsibilities under its provisions.
2. Process the AP-2 or HA-1 application.
3. Certify for the Treasurer, State of New Jersey, the names of eligible residents and authorize the payment of HAAAD benefits; and

4. Microfilm eligibility applications and supporting documents and retain microfilm for audit purposes.
- (c) The applicant has the responsibility to do the following:
1. Complete the PAAD eligibility application (AP-2) for those applicants not enrolled in the PAAD Program, or the HAAAD eligibility application (HA-1) for those applicants already enrolled in the PAAD Program. The application shall be legible and accurate. The applicant shall:
 - i. Answer all questions fully;
 - ii. Present all necessary evidentiary documents, including physician's prescription or letter attesting to the medical necessity for obtaining a hearing aid and a receipt for the recent purchase of the hearing aid;
 - iii. Read the certification and authorization statement; and
 - iv. Sign or mark the application; and
 2. Assist the Department to secure evidence that corroborates the statements when necessary.
- (d) The beneficiary has the responsibility to repay the State of New Jersey, upon request, for the cost of benefits incorrectly paid on his or her behalf.

SUBCHAPTER 5 ELIGIBILITY REQUIREMENTS

8:83B-5.1 Age

- (a) To be eligible for HAAAD, the applicant must be 65 years of age or older or must be under 65 and over 18 years of age and receive Social Security Title II disability benefits. Individuals under age 65 who receive disability benefits on behalf of someone other than themselves are ineligible. The applicant shall be able to document his or her age upon request by the Department. The Department will require that the applicant submit a photocopy of his or her certificate or other acceptable proof of age if over 65 years of age.
- (b) The following are acceptable proofs of age:
1. Primary proof: The applicant is required to submit a photocopy of one of the following documents:
 - i. Birth certificate;
 - ii. Baptismal certificate;
 - iii. Bris certificate;
 - iv. Social Security records verifying age (can be obtained from local Social Security office); or

- v. Railroad retirement letter (can be obtained from Railroad Retirement Board).
- 2. Secondary proofs: If the applicant cannot supply one of the documents listed in (b)1 above, copies of any two of the following documents are acceptable:
 - i. Insurance policy;
 - ii. Driver's license;
 - iii. School record;
 - iv. State or Federal census record;
 - v. Church record of baptism (age five or after);
 - vi. Confirmation certificate;
 - vii. Marriage record;
 - viii. Employment record;
 - ix. Union record;
 - x. Military record;
 - xi. Medicare card;
 - xii. Delayed birth certificate;
 - xiii. Applicant's child's birth certificate;
 - xiv. Physician's or midwife's record of applicant's birth;
 - xv. Immigration record;
 - xvi. Naturalization record; or
 - xvii. Passport.
- (c) If under age 65, the following are acceptable proofs of disability:
 - 1. A copy of a Social Security award certificate issued in the last six months;
 - 2. A Social Security Form or record; or
 - 3. A document issued by Social Security that establishes Medicare eligibility. The document must be dated within six months prior to the date of the application.

8:83B-5.2 Income standards

(a) Any single permanent resident of New Jersey who is 65 years of age or over or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have an annual income of less than \$20,437 to be eligible for HAAAD.

(b) Any married permanent resident of New Jersey who is 65 years of age or over or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have a combined (applicant and spouse) annual income of less than \$25,058 to be eligible for HAAAD.

1. An applicant and spouse shall be considered separated, and eligibility determined under the single income standard, when each maintains a separate residence and the applicant does not have access to the spouse's income.
 - i. Any support payment received by the applicant for the sole benefit of the applicant shall be considered as income for HAAAD eligibility purposes.
2. An applicant and spouse may be considered separated when the spouse has been institutionalized in a long-term facility, either skilled or intermediate, or in a State or county psychiatric hospital at least 30 consecutive days prior to application.
 - i. HAAAD shall consider the applicant and spouse separated only when doing so is more favorable to the applicant for HAAAD (for example, when the income of an applicant and his institutionalized spouse is combined at \$25,060, the applicant is ineligible for HAAAD, but if the applicant and spouse are considered separated, the applicant could become eligible for HAAAD under the single income standard. If the institutionalized spouse was not covered by Medicaid, the spouse could become eligible under the single income standard).

(c) All income, from whatever source derived, is considered in determining eligibility for the purpose of HAAAD. Jointly owned income sources will be allocated according to degree of ownership.

1. All income, taxable and nontaxable, is to be included. Examples of possible sources of income (gross amounts unless otherwise noted) are as follows:
 - i. Social Security benefits paid to or on behalf of the applicant;
 - ii. Veterans benefits;
 - iii. Disability benefits, whether public or private
 - iv. Salaries;
 - v. Wages;
 - vi. Bonuses;

- vii. Commissions;
- viii. Fees;
- ix. Dividends;
- x. Interest taxable and nontaxable;
- xi. Capital gains;
- xii. Royalties
- xiii. Bequests and death benefits;
- xiv. Support payments;
- xv. Unemployment benefits;
- xvi. Pensions and black lung benefits;
- xvii. Annuities (contributory and non-contributory, qualified and non-qualified);
- xviii. Retirement benefits including distribution from Individual Retirement Arrangements (IRA's) (Traditional, Simple, Roth, Educational) and benefit payments from foreign countries;
- xix. Business income (net);
- xx. Fair market value of prizes and awards;
- xxi. Gambling and lottery winnings; and
- xxii. Rental income (net after expenses).

2. Sources of income which are excluded in considering eligibility for HAAAD are as follows:

- i. Benefit amounts received under the New Jersey State Lifeline Credit Program/Tenants Lifeline Assistance Program;
- ii. Benefits received under New Jersey Homestead Rebates;
- iii. Proceeds from spouse's life insurance;
- iv. Capital gains of up to \$250,000 for a single person or up to \$500,000 for a married couple on the sale of a main home which is also excluded from income taxation by IRS and the New Jersey Division of Taxation;
- v. Stipends from the Volunteers to Service in America (VISTA), Foster Grandparents programs, Workforce 55+ program and programs under Title V of the Older Americans Act of 1965;
- vi. Agent Orange payments;

- vii. Reparation payments to Japanese Americans by the Federal Government pursuant to sections 105 and 106 of the Civil Liberties Act of 1988, P.L. 100-383 (50 U.S.C. App. 1989b-4 and 1989b-5);
- viii. Rewards involving health care fraud or abuse which apply to N.J.A.C. 10:49-13.4;
- ix. Holocaust reparations;
- x. Proceeds from viatical settlements;
- xi. Proceeds received by the beneficiary of a special needs trust (see N.J.A.C. 8:83-2.2 for provisions);
- xii. Rollovers from one tax deferred financial instrument (pension, annuity, IRA, insurance contract or other retirement benefits) to another tax deferred financial instrument;
- xiii. 1035 Tax Free Exchanges of a policy or contract handled between two insurance companies; and
- xiv. An insurance policyholder's original contributions if Demutualization of the policy occurs (in that case, only the earnings on the policy would be counted).

(d) The applicant must be able to document the amounts reported upon request by the Department, and will be required to submit photocopies of his or her Federal, State and/or city income tax return and other acceptable evidence.

(e) HAAAD eligibility is conferred based upon annual income for the current calendar year, which is estimated at the time of application. Previous year income information is used as a gauge and supplements estimates of current income to determine current eligibility. However, if previous year income exceeds the standard, but current year income is expected to fall within legal limits, an initial applicant may estimate current year income for the purpose of establishing HAAAD eligibility.

(f) Since HAAAD eligibility is based upon actual annual income, if the actual annual income for the applicable calendar year exceeds the HAAAD income standard, the person will become ineligible for the entire calendar year.

(g) The HAAAD program shall take necessary action to recover the full amount of payments made on behalf of beneficiaries during an ineligible period, when appropriate.

(h) HAAAD beneficiaries are required to notify the HAAAD program immediately if their current year income exceeds the established income standard.

(i) Beginning January 1, 1996 and annually thereafter, the income eligibility limits shall increase by the amount of the maximum Social Security benefit cost of living adjustment for that year for single and married persons respectively, in accordance with 42 U.S.C. § 415 (i)(2)(D), incorporated herein by reference. The Commissioner shall publish the new income limits annually in the New Jersey Register.

8:83B-5.3 Citizenship and residence

- (a) A person shall not be required to be a citizen of the United States in order to be eligible for HAAAD.
- (b) Any resident of this State shall be eligible for HAAAD (see N.J.A.C. 8:83B-2.1.)

8:83B-5.4 Recipient of other assistance and hearing aid coverage

- (a) Any person shall be ineligible for HAAAD if he or she is otherwise qualified for assistance for the New Jersey Title XIX (Medicaid) program.
- (b) If an otherwise eligible person's hearing aid costs are covered in whole by any other State or Federal government program or insurance contract, the person is not eligible for hearing aid assistance under these rules. If an eligible person's hearing aid costs are covered in part by any other State or Federal government program or insurance contract, the person may be entitled to receive reduced hearing aid assistance. HAAAD will pay full client liability up to \$100.00. The program will recover from the third party payor in cases where an applicant has partial coverage and total client out-of-pocket expense is less than \$100.00.

8:83B-5.5 Certification

The applicant for HAAAD benefits must sign a certification that all the answers to the questions and items on the application form are true and accurate to the best of his or her knowledge.

8:83B-5.6 Authorization

By signing or marking the certification and authorization statement on the application form, the applicant authorizes assignment of benefits to the State of New Jersey if he or she or his or her spouse has any other plan of assistance or insurance that covers, at least in part, the cost of hearing aids.

8:83B-5.7 Eligibility period

A person eligible for HAAAD is entitled to receive a payment of up to \$100.00 in a calendar year. Only one benefit may be issued in the period between January 1 and December 31 of any year. No benefits will be granted for hearing aids purchased prior to February 4, 1988.

8:83B-5.8 Recoveries for benefits incorrectly paid

- (a) The Department may take all necessary action to recover the cost of benefits incorrectly paid on behalf of a beneficiary.

1. The term "incorrect payment" includes, but is not limited to:
 - i. Payment made on behalf of a beneficiary whose hearing aid costs are wholly covered by another source;
 - ii. Payment made on behalf of a beneficiary who is no longer eligible, or has been incorrectly determined to be eligible to receive benefits; and
 - iii. Payment made as a result of fraud perpetrated by a beneficiary, his or her authorized agent and/or provider.

(b) The Department shall take all reasonable measures to ascertain the legal liability of third parties to pay for hearing aids arising out of injury, disease, or disability, where it is known that a third party is or may be liable to pay all or part of the hearing aid costs for a beneficiary.

8:83B-5.9 Appeal process

(a) When PAAD determines that an applicant is ineligible for Hearing Aid Assistance for the Aged and Disabled benefits, the applicant has the right to appeal the decision by submitting a written request for a fair hearing to Pharmaceutical Assistance to the Aged and Disabled, Department of Health and Senior Services, PO Box 722, Trenton, New Jersey 08625-0722, within 30 calendar days from the date of mailing of the notice of ineligibility. The document must clearly state the valid basis for such a request.

(b) PAAD shall forward the hearing request to the Office of Administrative Law which will schedule the hearing and notify all parties of the date, time and location.

(c) The petitioner will have the burden of demonstrating that PAAD's determination deviates from the requirements and standards of the regulations and statute.